IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff, v. RICHARD TIETJENS, Defendant.	Case No. 3:13-CR-111-BR April 11, 2013 Portland, Oregon

TRANSCRIPT OF PROCEEDINGS

(Detention Hearing)

BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

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(Thursday, April 11, 2013; 9:00 a.m.)

P R O C E E D I N G S

MS. SHOEMAKER: Good morning, your Honor. Calling Case 3:13-CR-111, United States versus Richard Tietjens.

I'm Jane Shoemaker for the United States. The defendant is present, in custody, with his attorney Lisa Hay. And this matter is on for a hearing on defendant's request for a review of the detention order in this case.

THE COURT: So let me tell you, Counsel, what I have and what I've reviewed.

I have the April 10 Pretrial Services Office report. I have the bail report that was prepared when the matter was before Judge Papak. I have the Government's response to the motion in writing. I have Ms. Hay's memorandum arguing the presumption of detention has been overcome.

I'm interested in knowing a little bit more about the concern that was first presented by Judge Papak at the detention hearing that then generated a search of recent computers by the Government. The notion that the defendant then had computers with this child pornography contraband, accumulated after an initial search back in 2011, as I'm understanding it.

What I'm trying to get a handle on is when that first

search occurred and when the defendant was obviously aware that he was the focus of an investigation, what -- what was conveyed to the defendant about what was going to happen after that search, and was there a reason there wasn't prosecution immediately thereafter?

I'm interested in knowing a little bit about that course, and insofar as it might bear on the defendant's mental state and this concern about a compulsion that can't be controlled with conditions of release.

MS. SHOEMAKER: Your Honor, when the police first executed a search warrant at the defendant's residence back in December of 2011, it's my recollection that they told him he was not going to be under arrest at that time. Of course, they had a search warrant with probable cause.

They had just, during the execution of the warrant, seized multiple computers, multiple hard drives attached to them, two servers that were out in the garage. And they needed to conduct a forensic examination before any decision would be made about pursuing charges in the case.

Those servers had over 15 terabytes of storage space on them that had to be searched, in addition to the desktop computer and all of the different hard drives that were attached to them. I forget now exactly how many hard drives there were, but I believe one of them had eight hard drives attached to it. And then the forfeiture count lists all of the

different ones. The one server had eight hard drives attached to it. Another server had six hard drives attached to it. Then there was a desk-type computer that had four hard drives attached to it.

And so it took a very long period of time for all of that evidence to be analyzed. And then it was referred over to our office, and then it took us some time to be able to pursue the charges in this case, just due to other matters that were in the office.

So during that period of time, there's one thing that wasn't referenced in the paperwork that I want to bring to the Court's attention.

I was talking to the case agent, when we were preparing for the hearing, thinking it was the other day. And he mentioned to me that the very day after they seized all of the computers from the defendant's residence, back in December of 2011, a police officer went back to the defendant's house the next day -- I believe -- to ask him something. And he was invited into the house, and he saw, when he went into the house, that there was another homemade computer already built, in the house the very day after the police had seized all of the computers and servers from the defendant's residence the day before.

So when -- shortly before the Indictment -- I think it was actually the day before the Indictment was presented to

the grand jury in this matter, the police went back to ask the defendant if he would be willing to be interviewed again and asked him for consent to seize the new computers and servers that were at his residence. And he consented for the police to seize certain of those computers and servers but not to seize other computers that he said belonged to his wife and a computer that was hooked up to their television.

And so the police seized those items that day. Which, again, I believe was the day before the Indictment in this case. And the police had not had time to look at those devices, to search them prior to the defendant's initial appearance in this case.

He did tell the police in that interview, when he consented to the seizure of those additional devices, that there shouldn't be any child pornography on these computers now; suggesting that he wasn't still engaged in this activity.

So when we had the hearing in front of Judge Papak, he indicated -- and when I was arguing about the risk of the defendant's danger to the community based not only on the presumption but on the volume of child pornography the defendant had amassed, which obviously would be something that would take a very long period of time -- likely years for him to collect -- that we were concerned. And once again, having all of these computers and servers configured in the same way as the ones that were seized in December of 2011. So we were

concerned that the defendant was still engaged in these offenses.

And Magistrate Judge Papak said that if there were evidence that the defendant was still engaged in this activity, if there was more child pornography on these new devices, then he would agree with us and be inclined to detain him. So he asked us how long it would take to search them or why they hadn't been searched yet. And we said there simply hadn't been time to search them. I didn't know how long it would take, but that if we could have a three-day continuance that we were entitled to under the statute, that we could attempt to examine at least some of the devices for a continued detention hearing.

So we obtained that continuance, and over the weekend the agent attempted to image and search the devices that the defendant had consented to, to see if there was any child pornography.

Once again, the devices contained terabytes of storage space.

So the case agent told me that -- I don't have the notes of my conversation right there, but I believe I referenced it in our response. I believe he said that it was going to take at least a week just to do -- to image the devices and likely take months to search them all. But he was able to -- scratching the surface of the desktop computer, he did locate a file that was -- I believe it was call "young,"

that contained images of child pornography in it. And he also saw that there were stories in there about -- it was an incest theme of children and their father engaged in sexual activity. And there was, I believe, a chat where he told somebody that he's attracted to girls that would be the age of his children or grandchildren.

And so the agent didn't continue looking once he found a file that did have child pornography on it. And, of course, as I said, it was just scratching the surface, and there was no way that he was going to be able to conduct a thorough examination of that before the detention hearing.

So when we returned on the following Monday and had the continued detention hearing with Judge Papak and told him about that evidence, Judge Papak agreed that the defendant is a danger to the community and ordered him detained.

And so after that hearing, the defendant revoked his consent, and so the Government has not conducted any further search of those devices at this time. And we may apply for a warrant. We're in negotiations right now, and so it will just depend on what happens with that. But, essentially, that's what the circumstances are.

So what we're talking about here is, first, the seizure in December of 2011 that involved two servers with over 15 -- or approximately 15 terabytes of storage information. One of those servers had on it an application -- a peer-to-peer

application, where the defendant was able to download and make available for others to obtain from him images of child pornography.

There were also thousands of images and videos of child pornography stored on those servers. The defendant admitted in a later interview -- and the police could tell from their examination of it -- that it appeared other people were storing their child pornography on his servers as well. At least one other woman.

In addition, the police obtained a search warrant and the defendant's consent to search his e-mail account. The daddy_mystery@yahoo.com.

And from the e-mails that were available on that e-mail account, we learned that the defendant was actively trading child pornography with another -- a number of other Yahoo e-mail account holders.

THE COURT: As -- as of when?

MS. SHOEMAKER: Well, the dates that were available from the information we obtained from Yahoo for that search warrant include the dates that are in the Indictment that would include from July of 2011 through (pause, referring) August of 2011. And those were with several different individuals, including an e-mail account identified as k_waters55@yahoo.com. Another one lococigar69@yahoo.com, popfortots69@yahoo.com, and momknowsbest69@yahoo.com.

And those e-mail accounts showed that the defendant was trading. Sometimes he was -- he was saying something to the effect of, you know, I'll give you this if you give me that. Other times, he was receiving images or videos of child pornography from these other individuals. And in many of the e-mails he was providing videos and images of child pornography to the other individuals.

THE COURT: So -- so clarify for me, please. To what extent is this data, data to which the defendant accessed after the search warrants versus before?

MS. SHOEMAKER: The only thing I can say about what he did afterwards, based on what the agent was able to do over that one weekend, was to show that he had viewed -- he had a folder on his desktop computer that had in it -- I believe it was titled -- if I can just have one moment here to look.

(Pause, referring.)

MS. SHOEMAKER: Here it is, your Honor.

Where they found a file on his desktop entitled "youngsters," that contained images of child pornography. And it showed that it had been accessed in November of 2013 and again in January of 2013.

MS. HAY: That would be November of 2012.

MS. SHOEMAKER: I'm sorry. It should be November 2012. That's a typographical error there. And January of 2013.

So without having been able to search further at this point, we can't say exactly what the defendant was doing between December of 2011 and November of 2012, other than he had built and obtained two new servers and another desktop computer that were configured the same way as the other servers and computers that he had, with multiple hard drives attached to them, with -- again -- terabytes of storage space. And we're finding the stories about incest, statements to somebody in a chat about being attracted to girls who are the age of what would be grandchildren or children, and this file that we found.

I think the fact that he had thousands of videos and thousands of images of child pornography stored on all of these different devices; that he was engaged in active trading with other individuals, not just collecting the child pornography himself, exacerbates it and shows that he has a very strong sexual interest in children. That he's been doing this for a very long period of time. This is not something -- you cannot amass collections like that overnight. This is something that would have taken a long time.

Some of the e-mails that he had, that were on the Yahoo e-mail account, that were seized back in December of 2011, there were conversations with him with, for example, the individual identified -- or using the -- the e-mail account lococigar69@yahoo.com. I believe that's the same person who

later changed the e-mail to popfortots69@yahoo.com. This is a person who claimed to be sexually abusing his young granddaughter and producing his own child pornography. That the defendant was seeking images of that sexual abuse from the individual using these two Yahoo e-mail accounts, lococigar69, and popfortots69.

The police later did an investigation and identified who that individual was, and learned in fact he was not in fact abusing a granddaughter but was getting the images somewhere else. But he was claiming that he was abusing his granddaughter. And this defendant, in those e-mails, was encouraging that individual to sexually abuse the grandchild and send him more videos and pictures of it.

He was also talking to -- I believe it was the momknowsbest e-mail account, momknowsbest69@yahoo.com, where -- it was either her or it was the K_Waters e-mail account, where he was talking to the woman with her having her, I believe, son and daughter engage in sexual activity together. That he wanted images of that.

And so this evidence -- the fact that he's amassed this collection, that he has this volume of space on his servers and his computers, where he's got the peer-to-peer network application that allows him to not only download but to share his stuff, and he was actively sharing through e-mail and instant messenger the child pornography over this period of

time, and he continues to engage in this conduct even after he knows that he's the subject of a law enforcement investigation, shows that he is addicted to child pornography and that he is not going to be able to stop collecting and/or trading child pornography in this case.

He's obviously highly skilled and sophisticated technologically, to the point that he can build his own computers, build his own servers. He could circumvent, I think, any sort of monitoring equipment that might be put on his wife's computer, if she were allowed to maintain computers in the house, or to get through the passwords. He could obviously build new computers or new servers. He could potentially be using or hacking into his neighbor's computers, using library computers. There are just so many different ways a person like this, with these skills, could circumvent any order if the Court were to release him on conditions in this case and continue to access child pornography and potentially trade child pornography with other individuals.

Congress has said that these child pornography offenses are crimes of violence. That's defined under Title 18, Section 3156(a)(4). And, as a result, there is a rebuttable presumption that the defendant is a flight risk and a danger to the community.

I think the fact that he has lived in the community -- he's -- he's got a wife and he's got his home and

he previously was employed, and all of that, and the fact that he didn't flee after becoming aware of the investigation, I'm not advancing that argument. I -- I don't think that he's going to flee. But I do think that he's a danger to the community, and I do think that the presumption has not been rebutted in this case.

I just don't think with a guy like this, who's been collecting child pornography and actively trading it this long, even after he knew he was the subject of an investigation, and with his skills, I just don't think there's any way that we can be reasonably assured that he is not going to continue to engage in these crimes which Congress has defined as crimes of violence.

He's a danger to the community. He's got a strong sexual interest in children, and that is a danger to the community.

THE COURT: Thank you, Ms. Shoemaker.

Ms. Hay.

MS. HAY: Thank you, your Honor.

I think you identified exactly the -- the question that we should be focusing on, which is what is different from December of 2011 and today.

I think the facts in this case, of course, are based on the Government's allegations, and we need to review all of it. But -- and the Court understands that the nature of the

offense is the least important factor when deciding dangerousness, but there is the presumption.

I did want to point out, your Honor, that the presumption that's listed in 3142 for certain offenses that involve minors includes the transportation -- or the transmission of child pornography but many of the other offenses are in the range of actual minors being harmed in person by this defendant, meaning kidnapping, sex trafficking of children, aggravated sexual abuse.

These are all of the offenses that are listed under 3142. Let's see. What is the -- little (e) -- (d)(e). And the transportation -- or transmission of child pornography is one of the cases in which there's a presumption.

But possession of child pornography is not one of cases in which the presumption is listed in the -- in the Statute 3142.

So, to me, I think what's different here is that the presumption applied to the offenses that this defendant was charged with committing as of December 2011; that he was transferring/transmitting child pornography.

What I understand happened -- and this is from the Government's discovery and some other conversations, is that they went to his home with a search warrant. They told him that he wasn't going to be arrested now but that they had a search warrant. They could have arrested him. And that they

were going to go and review all of these computers.

I do not believe they took all of the computers from the home at the time. He had partial computers and pieces of computers.

As your Honor can understand, he's a -- his hobby is computers. That was his -- his job was working on computers, and that's the love of his -- you know, what he spends all of his time doing, is working on computers, building them, fixing them for others, creating them out of junk that he finds. That's what he does.

I think what the Government hasn't told you is that among all of these terabytes of information on the computers are also zillions of ordinary movies, music, videos, things that are not pornographic.

So he has a lot of storage space on computers. He downloads a lot of things from the Internet. Not all of it is child pornography. There's no doubt, as they said, there's a lot of that in the discovery, is what they're telling us, but --

THE COURT: Can you slow down just a touch, please, Ms. Hay.

MS. HAY: Sure.

He has an interest in computers. He knows how to build them. Nobody told him, when he was talking to the police in December of 2011, that he couldn't have computers.

So the fact that he then went and built more isn't evidence --

THE COURT: It's not that he built more computers, Ms. Hay. It's the concern that -- that there seems to be evidence that he acquired more child pornography and may have actually transmitted more child pornography. It's hard to tell.

MS. HAY: So I guess -- that's what I don't -- your Honor, I don't know that there's an agreement on that.

I think the evidence is they found a file on his -- on his desktop that had a name referring to child pornography and included child pornography in it. But I don't know if that is a file that is leftover from a hard drive that the agents did not take --

THE COURT: And I don't know that it isn't.

MS. HAY: Right.

THE COURT: When I'm dealing with a presumption of detention, there has to be a rational, nonspeculative factual basis for me to conclude the presumption has been overcome.

I think what's of concern here, legitimately, is that the -- that your client is not the ordinary, unsophisticated person accused of child pornography crimes.

MS. HAY: Yes.

THE COURT: And so this argument that he continues to present as a danger to the community derives from his

special -- specialized expertise and a reasonable inference, the Government is asserting, that he is not able -- even if he was intellectually willing -- to resist the impulse to continue to engage in the -- the -- and each -- each act of viewing child pornography anew, that he would be likely to engage in -- says the Government because he can't be guaranteed not to access child pornography -- would be yet another victimization in contravention of the presumption.

So this is not a man who is your ordinary guy who just knows how to use an iPhone or some device, and I -- I think the Government's argument is legitimate.

MS. HAY: And, your Honor, I agree it's not an ordinary case. But I think the difference on the information that was discovered on -- on the second time they came to the house -- first, I want to just point out that the Government did have information about him. December 2011 is when they -- they seized the computers.

The Government has told us that they did get the information about what was on the computers, and that due to other matters in their office, they didn't feel at that point there was a danger and they needed to go arrest this defendant. They let it slide for a while.

So the fact that there was so much information on his computer, that he was trading, that they knew about these e-mail accounts, they knew about the lococigar69 chats with

somebody, all of that they knew and they didn't go arrest him immediately. They said other things were happening in the office. They waited. So I think that weighs against a sense that this is -- that based on all of that knowledge, and all of those things that he had, shows that he's a danger.

I think that the issue is simply what -- what about when they came back and there were more computers and more child pornography --

THE COURT: So what are you proposing specifically that would be a factual basis from which I could conclude rationally that there is not a risk the defendant will continue to amass, access, or otherwise engage in child pornography crimes if he was released?

MS. HAY: Your Honor, I think there's two bases for that. First is when the officers contacted him again -- contacted him again in 2013 and asked him if he would be willing to come to their office for additional interviews, he was willing to do that.

He's cooperated every time they've come to talk with him. So I believe he's doing his part in following -- following requests.

THE COURT: He cooperated earlier but --

MS. HAY: In 2011.

THE COURT: Counsel says he's revoked consent to search. Is that accurate?

MS. HAY: Your Honor -- yes, that was through me, your Honor. That's simply -- I hadn't seen the discovery at that point. I wanted to make sure I understood if there was a legal basis --

THE COURT: I'm not being critical. I'm just trying to be complete here.

MS. HAY: Right. Yes.

THE COURT: So he cooperated earlier.

Go ahead.

MS. HAY: And they asked him to come to meet with them. He went to the police station. He talked with them some more. He then agreed that they could take the computers and -- that were in his house, that he had again built.

As the Government's memo points out, it is a homemade computer, made with pieces that he put together. I think there is a factual question on when that information was put onto his computer, that child pornography that they're saying was there.

The Government has given us an access date of 2012 and January 2013, but that's not the creation date. That's simply, for example, when the file might have been moved.

So I haven't seen the information enough to know whether he's actually gone onto the Internet and downloaded masses of child pornography again.

Mr. Tietjens told the agents he didn't think there would be child pornography on those computers.

So I think there's a question here about how much actually is on the computers now.

THE COURT: But when you have the burden and the presumption exists, I can't ignore what is, I think, a rational concern.

Proposing that the defendant be released to his home doesn't really provide any kind of meaningful assurance that between his compulsion -- which I presume for purposes of this hearing but not for purposes of his ultimate culpability -- and his talent, that there does not seem to be a reasonable basis to think that's wise. That -- that there is, in other words, a likelihood this behavior will recur in that setting.

I -- I can't draw any other conclusion on the record I have.

MS. HAY: Your Honor, I think what I could offer, then, is we have his wife available by phone.

I did put some brief parts --

THE COURT: It's not about the wife, Ms. Hay. It's about him.

MS. HAY: About what would be available in the home. That he previously --

THE COURT: That's not the problem.

The -- if -- if we knew that electronic access was confinable to a geographic space, if I had any confidence that an order telling him not to do this would be honored, we'd have

something to talk about.

But the premise the Government's proceeding on is a reasonable one. That is that the sheer volume of contraband the defendant amassed up to 2011; the fact that after computers were seized, more pornography was found -- and I don't know if it was before or after, but I can't assume latter -- I mean, the former.

The fact that he has the talent that he has, I know that those with those kinds of talents can access electronic data in a variety of ways: Through a television monitor, through somebody's Play Station machine, somebody's home. There are -- there are countless ways a person with talent can get into the Internet, even if his wife doesn't have a computer in the room, even if he promises he won't do this.

So what you're proposing to me is not a sufficient basis for me to have any confidence that I can release him to the home and expect he won't somehow manage to feed what seems like a compulsive behavior. Again, for purposes of this hearing and not for purposes of other issues.

So I don't think the presumption has been overcome with respect to the fact that the defendant -- defendant's past behavior and his behavior up to the time of his arrest suggests he's likely to reengage in this behavior, despite an order to the contrary and the relatively unsophisticated means the Court has to enforce this kind of condition.

I'm open to reconsidering this if you can put together something that allows me to draw an inference that there is a very good likelihood the defendant won't access or transmit pornography if he's released. Won't have access to any computer.

You didn't propose, for example, a placement in a reentry center where his physical whereabouts will be monitored. I just can't see the defendant in his home, with the talents he has, and a simple "Don't do this" order from me as enough. So this record --

MS. HAY: Yes, your Honor --

THE COURT: -- can't get me to that place.

MS. HAY: So I'm trying to think of what I can come up with as an alternative.

THE COURT: I don't know that you can, Ms. Hay. What I am saying is this record doesn't support a finding that you've overcome the presumption.

MS. HAY: May I propose some other conditions, your Honor, that might -- I mean, what I'm trying to understand -- it sounds to me like it's -- the Government's argument is that there is an addiction here that can't be overcome. And if it were a drug addiction, we would put him in a drug treatment facility.

I'm trying to think. If this is an addiction to accessing child pornography --

THE COURT: Well, the only way I know of for certain, to keep him out of the computer, is in the custody of the United States Marshal.

If you can conceive of and rationally demonstrate something that's as secure, then I'm happy to hear about it. But I don't want to speculate.

MS. HAY: So I don't want to waste Pretrial's time.

May I suggest something, your Honor, that -- possibly what I would want to propose is that we have Pretrial Services and I could go out to the residence to take out --

THE COURT: He's not going home. That is just not a secure situation.

I do not have confidence that a person with his talent, in a residence, with a wife who's ill, is going to be able to be trusted not to do this. That's just going to happen.

So he stays in custody because I know the likelihood is less he will have access to a computer. I'm not so naive as to conclude there aren't some opportunities. But that's one where I know there won't be a risk of reoffending.

You -- you would need to present something like that. Some alternative where he's not going to be on his own and accessing, through his considerable talents -- having the opportunity to access, through his considerable talents, what seems like a serious problem.

So I'm denying the motion to -- well, I granted the Motion to Review Detention in that I've reviewed it, but I'm concluding that the rebuttable presumption has not been overcome with respect to danger to the community.

I appreciate the Government's concession that the defendant is not a likely flight risk. That's not the issue here.

So, now, why don't we talk a bit about dates, while I have you here.

What was the trial date set by the magistrate judge?

MS. SHOEMAKER: May 14th.

THE COURT: Okay. Are you going to be ready for trial May 14th?

MS. HAY: Your Honor, we would not be. We haven't been able to review the computers. I'm wondering if maybe we should have this declared a complex case, given the nature of the 15 terabytes and however many hard drives and others that I would need an expert to review, especially because the -- the weight that the Court's putting on the later-seized computers, I would want to make sure I look at those.

THE COURT: Ms. Hay, please understand me.

I fully presume your client to be innocent in terms of his ultimate culpability.

My duty today is to determine whether a rebuttable presumption, based on what you've all brought to me, has been

overcome, and it hasn't.

I'm concerned that releasing the defendant, in any event, would be unwise. He's staying in custody.

Let's -- let's develop a plan and get this issue resolved on its merits as soon as reasonably possible.

I appreciate you can't be ready for trial in May.

Have you had an opportunity to speak with your client about his speedy trial rights and what you would be suggesting, in terms of me?

Do you want an opportunity to talk with him right now, before we --

MS. HAY: I did talk to him, your Honor, and let him know that given the number of computers the Government's referred to and the storage on them, that I would consider it complex and would need more time. And he agreed that we could -- I could ask for additional time, if needed.

THE COURT: Well, let's find a trial date now, recognizing that May is not going to be soon enough.

What's the Government's thought in terms of time it can be ready and it reasonably can produce discovery to the defendant so he can be ready?

You need to know that recently this week, in -- in our judges' meeting, we were presented with arguments by the United States Attorney and the Federal Defender, himself, concerning continuances and the time it takes. And the issue

of the ability to have cases tried within a certain time frame was tied directly to the time it takes the Government, in one case or another, to produce the discovery.

So the sooner the Government can pony up what it knows it has to and give the defendant a reasonable amount of time to assess it, the sooner we can push. But that tension is being brought to us, as -- as a board of judges, from your respective offices. And I certainly have my own concerns about how long it takes to get matters to trial. And the defendant's in custody, so we need to move reasonably.

What are you thinking?

MS. SHOEMAKER: Your Honor, we did provide discovery to the defense on March 28th, in accordance with the magistrate's order at the initial appearance, to provide discovery within 14 days.

And, of course, that doesn't include the images of child pornography themselves. But we did make known to Ms. Hay that she can contact the case agent to make arrangements for herself and/or an expert to go view that material at the Newberg/Dundee Police Department.

There -- as -- in most cases, we usually wind up having some additional discovery, as we go through ours and are preparing for trial, realizing there's additional stuff that needs to be produced, and I'll obviously need to do that.

But I believe that the discovery has been provided in

this case. It's really just a matter of the seizure of the computers and the forensic examination. And this is not a case that's based on, you know, cooperating witnesses, or anything like that, where we have other things outside of the case to be looking at.

So I think, you know, we'll make ourselves ready for trial whenever the defense is ready.

I -- I don't think that just because there's a significant volume of material here, that that necessarily makes it a complex case.

It's -- we really only need to have one image of child pornography for the possession count. And --

THE COURT: You may only need one image, but the defense needs a fair opportunity to evaluate the majority, at least, of the Government's evidence to determine whether there are any other issues that are important for the defense to raise.

So it isn't just the Government's need. It's -- it's what the defense needs reasonably to provide effective assistance of counsel and evaluate all of the exposures, and so forth. To characterize what's there, relative to the mandatory minimum offense charge versus other matters, to fully advise the defendant -- you know, we can't expect Ms. Hay to simply go to trial on one image. That's --

MS. SHOEMAKER: And I don't mean to suggest that.

I'm sorry, your Honor. I didn't mean to give that impression. All I'm saying is that although there's 15 terabytes of storage space, I don't think that it necessarily requires a review of every single thing that's on those devices. And if they needed to do that --

THE COURT: So give me a suggestion as to when you believe I should set the trial date.

MS. SHOEMAKER: Well, I don't know what the defense expert's timing is going to be, but --

THE COURT: Ms. Hay, what are you proposing?

MS. HAY: Your Honor, I guess if it's set in May now, I would think at least we would need until July for a trial date.

THE COURT: Let's look into the first week of August.

Do you have your calendar?

MS. HAY: I do.

THE COURT: And do you?

MS. SHOEMAKER: I don't, but we can set it for --

THE COURT: So let me suggest that we also set the trial on Monday and not Tuesday.

You may know that as a result of the furlough issues, we've been asked not to have criminal proceedings on Fridays. And so the idea of starting a trial on a Tuesday, only to adjourn on a Friday, seems not very efficient to me.

So we -- I could propose to you Monday, August 5;

Monday, August 12.

MS. HAY: Those are all fine with me, your Honor. And I also am furloughed on all of those Fridays. But -- but we could set the trial then anyway.

THE COURT: Okay. And do you expect, Ms. Shoemaker -- how long for trial?

MS. SHOEMAKER: Three days, your Honor.

THE COURT: Let's set it for Monday, August 5, at nine o'clock for jury selection. Set a pretrial conference in the preceding week, Wednesday, August 31, at nine o'clock. I'm sorry, July 31, at nine o'clock, for the pretrial conference.

So papers to prepare me for that will be due July 15. And, here, I mean your jointly proposed elements, jury instructions, and on any substantive matter for which the defendant may be assuming the burden of proof. I don't know where we're going with this, so just the elements instructions and any burden of proof issues. Trial memoranda, motions in limine, the Government's exhibit lists, the Government's witness list. And then notations on both as to whether any of the proposed witnesses or any of the proposed exhibits are the subject of objections.

And then motions in limine and supporting legal argument as to those objections, or any other evidentiary issues you need me to raise -- or to resolve.

Do you anticipate, Ms. Hay, based on what you know

now, any evidentiary -- the need for me to schedule any evidentiary pretrial motions, Motions to Suppress, or so forth?

MS. HAY: I asked the Government to provide signed copies of the search warrants. I don't have those yet, your Honor. I would need to review that. But that would be the issue that I could see as a possible suppression issue.

THE COURT: Okay. So let me give you a deadline for the filing of any of those motions.

Give me just a moment, please.

(Pause, referring.)

THE COURT: Ms. Shoemaker, how long do you think that Senator case will actually take to try?

MS. SHOEMAKER: I believe the Thursday of the second week, potentially, your Honor. We're still hoping that it will be maybe the Tuesday or Wednesday. But it could go that Thursday.

THE COURT: (Pause, referring.)

Okay. If there are any motions to suppress or other pretrial matters on which I need to conduct an evidentiary hearing, the hearing will happen on Monday, July 8, at ten o'clock.

And for that then to happen, the motion needs to be filed no later than June 14, and any responsive memoranda filed no later than June 28. And then we'll take the evidence at the hearing on July 8. And in a perfect world, I can make findings

of fact and conclusions of law at the conclusion of the hearing. And if I can't, then I'll write them out. That would still leave us with enough time to go to trial on August 5.

In the meantime, just to ensure we're making progress toward the August 5 trial date, I would like a joint status report from the parties May 17. Just a joint report from counsel, indicating the progress you're making, identifying whether there's any need for me to convene some kind of proceeding to help resolve and move you along toward the August 5 trial. So just a joint status report.

And then if there are any other issues that come up, of course you'll let me know, and I will deal with them.

I am finding excludable delay through the ends of justice exception to the Speedy Trial Act through August 5. I don't think it's necessary to make a complex case finding at the moment. I'm satisfied any responsible lawyer would need the time I'm allowing now adequately to be prepared to review the defensive issues, to engage in discussions with the Government, and so forth. So that's your new trial date.

Are there other matters, Ms. Shoemaker, you want me to address while we're still together?

MS. SHOEMAKER: I don't believe so, your Honor. Thank you.

THE COURT: Ms. Hay?

MS. HAY: No. Nothing else. Thank you, your Honor.

THE COURT: All right. Thank you, everybody. We're in recess on this matter.

(Conclusion of proceedings.)

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I certify, by signing below, that the foregoing is a correct transcript of the oral proceedings had in the above-entitled matter this 10th day of January, 2014. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

AMANDA M. LeGORE, RDR, CRR, FCRR, CE